

Proposed Bill to abolish charges for non-residential social care

Page 2: About you

Please provide your name and other contact details. Please provide at least one means of contacting you (address, e-mail or telephone) - e-mail is our preferred option. (NB: you will be given the option shortly to specify whether it is your name or your organisation's name that is to be used, and you may also request anonymity or confidentiality for your response.)

Your name (mandatory)

Kiana Kalantar-Hormozi

Name of your organisation (if applicable - otherwise leave blank)

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Your Job Title (if applicable - otherwise leave blank)

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Contact details (please provide at least one of: email, telephone number, postal address) (mandatory)

[REDACTED]

Please indicate below whether you are content for your response to be attributed to you by name (either your name or that of your organisation)

I am content for my response to be attributed to me (as an individual)

Page 4: Your comments on the proposal

Q1: Do you support the principle that non-residential social care services should be available free at the point of delivery to those who have been assessed by a relevant professional as requiring them (as is the case within health care)?

Yes

Please explain your answer

I have strongly protested this violation of my rights. I quote from part of a letter I sent to Mr Williams, Head of Social Work at 10th September 2014:

"I wrote to social work on 02/04/14 regarding the care tax, answering queries about my income. To date, I have not received a single response or letter. Yet, this is apparently withholding my budget. This is completely both illogical and against my rights. I am unable to respond to someone or act when no response has been given, yet this is being held against me. I have attached a sheet to this letter detailing all of my rights as a disabled person: some are more general and other, such as my right to independence, are more specific. As a person, I have the right to maintain my autonomy and health and this is in effect being denied due my budget being completely cut. This is a violation of my Human Rights and is a dehumanising situation where I am in fact being stopped from living my life as any other person would be, only due to lack of personal support which I require as a consequence of my disability. The 73 hours which I was assessed for when I was in sixth year at school is the bare minimum that I should be receiving: I have been trying for the past four years to increase this budget: instead, social work have managed to cut my budget altogether.

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I have been spending what should have been the best years of my life a university dealing with social work instead and having opportunities taken away from me due to lack of a support budget. Now, my university semester is beginning next week, for my final year, and I am yet again forced to deal with issues which social work have been making instead of concentrating on my studies. "

I quote the law which I included at the end of the letter:

UN Convention on the Rights of Persons with Disabilities

Article 3 - General principles

The principles of the present Convention shall be:

- a. Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- c. Full and effective participation and inclusion in society;

Article 4 - General obligations

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

- a. To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;
- b. To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
- c. To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;
- d. To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;

Article 5 - Equality and non-discrimination

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

Article 10 - Right to life

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

Article 14 - Liberty and security of the person

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

- a. Enjoy the right to liberty and security of person;
- b. Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

Article 19 - Living independently and being included in the community

States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

- a. Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
- b. Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;
- c. Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

Article 24 - Education

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life long learning directed to:

- a. The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- b. The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;

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c. Enabling persons with disabilities to participate effectively in a free society.

Article 25 - Health

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation.

Community Care Act 2002

1 Regulations as respects charging and not charging for social care

(1) Subject to subsection (2)(a) below, a local authority are not to charge for social care provided by them (or the provision of which is secured by them) if that social care is—

(a) personal care as defined in section 2(28) of the Regulation of Care (Scotland) Act 2001 (asp 8);

(b) personal support as so defined;

(c) whether or not such personal care or personal support, care of a kind for the time being mentioned in schedule 1 to this Act; or

(d) whether or not from a registered nurse, nursing care.

SCHEDULE 1 SOCIAL CARE NOT ORDINARILY CHARGED FOR

(introduced by section 1(1)(c))

1As regards the personal hygiene of the person cared for—

(a) shaving;

(b) cleaning teeth (whether or not they are artificial) by means of a brush or dental floss and (in the case of artificial teeth) by means of soaking;

(c) providing assistance in rinsing the mouth;

(d) keeping finger nails and toe nails trimmed;

(e) assisting the person with going to the toilet or with using a bedpan or other receptacle;

(f) where the person is fitted with a catheter or stoma, providing such assistance as is requisite to ensure cleanliness and that the skin is kept in a favourable hygienic condition;

(g) where the person is incontinent—

(i) the consequential making of the person's bed and consequential changing and laundering of the person's bedding and clothing; and

(ii) caring for the person's skin to ensure that it is not adversely affected.

2As regards the person's eating requirements—

(a) assisting with the preparation of food;

(b) assisting in the fulfilment of special dietary needs.

3If the person is immobile or substantially immobile, dealing with the problems of that immobility.

4If the person requires medical treatment, assisting with medication, as for example by—

(a) applying creams or lotions;

(b) administering eye drops;

(c) applying dressings in cases where this can be done without the physical involvement of a registered nurse or of a medical practitioner;

(d) assisting with the administration of oxygen as part of a course of therapy.

5With regard to the person's general well-being—

(a) assisting with getting dressed;

(b) assisting with surgical appliances, prosthesis and mechanical and manual equipment;

(c) assisting with getting up and with going to bed;

(d) the provision of devices to help memory and of safety devices;

(e) behaviour management and psychological support.

Human Rights 1998

ARTICLE 3

Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

ARTICLE 5

Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in

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the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

ARTICLE 8

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Q2. Do you agree that legislation is a necessary and appropriate means of addressing the issues identified?

Yes

Please explain the reasons for your response

Unfortunately, when the rights of those with disabilities is so clearly violated and not recognised by society, the only means of ensuring those rights is through legislation.

Q3. The current system has resulted in varying charges in different areas for the same level and quality of service. Do you agree that there should be consistency across Scotland?

Yes

What do you think the advantages and disadvantages would be?

I agree there should be consistency - consistently not charging.

Q4. Should all social care related services be free at the point of delivery?

Yes

If you answered Yes, please explain your reasons. If you answered No, please explain which services should be excluded, and why. (Please refer to the services set out on page 7 of the consultation document).

Q4. Should all social care related services be free at the point of delivery?

I cannot claim to fully understand all disabilities, their consequences and their requirements. However, if a person's disability is such that they require 24/7 support to live independently then that support should be provided. Not in the form of community care centres or any other draconic measures still in place today, but in accordance with the person's wishes which is normally to live in their own home.

Q5. What are the likely financial implications (if any) of the proposed Bill to you or your organisation? What (if any) other significant financial implications are likely to arise?

I would no longer have to pay charges, although up to now I have refused as I strongly hold it is against my rights. I am taking legal advice on the matter.

Q6. What do you think the implications of the proposed Bill are for equality? If it is likely to have a substantial negative implication, how might this be minimised or avoided?

Positive

Please explain your answer. If you answered Negative, please suggest any ways this impact could be minimised or avoided.

It would not extend far enough to ensure people receive the amount of support they require, but as a first step it would recognise legally that persons with disabilities should not have to pay for their rights.

Q7. Are there any other comments you would wish to make that are relevant to this proposal?

It's the 21st Century - it's ridiculous we are only just now considering the rights of disabled persons. This Bill is grotesquely overdue.